IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No.1932 of 2003

Mahesh G Garodia. ...Petitioner.

Versus

Municipal Corporation of Greater Mumbai and ors.] ...Respondents

Mr. Shekhar Shetye i/b Shaunak Satpute for the petitioner.

Mr. K K Singhvi, Sr Advocate with Ms Priti Purandare for respondent Nos.2 to 4

Mr. K.K Belosey, Govt. Pleader for respondent No.5

Mr. Shiraz Rustomjee with Mr G.V.Auman for Respondent Nos.6 and 7.

Mr. Sanjay Kotak i/b Purnanand & Co for Respondent No. 8

Mr. K.H.Mody i/b R.M.G Law Asson for Respondent .No.14

Mr. Bipin Joshi for Respondent No.16.

CORAM: H.S. BEDI, C.J. , &

V.M. KANADE, J.

DATE: 6th December, 2006.

Judgment (Per H.S. Bedi, C.J.)

1. This petition is a clear example of the misuse of the judicial process at the hands of an unscrupulous builder. It also betrays a complete lack of concern for those with whom the builder had solemnly undertaken by contract to provide certain facilities.

2. The facts necessary for the disposal of this petition are as under.

3. Respondent No.1 -Municipal Corporation of Greater Mumbai sanctioned a private lay out plan for Garodianagar in respect of 66 acres of land. On 20th May 1965 Gordhandas Garodia and others executed an agreement Exhibit C with respondent No.1 embodying the terms and conditions of the sanction. As per this agreement a total area of about 38,717 sq yards was earmarked as a Recreation Ground(RG). Concededly as a consequence of the development of the colony, a large number of residential units have since come up. It appears that as the developers had failed to comply with the terms of the

sanction in not providing amenities such as toilets over a period of time, the Chief Executive Engineer prepared a note dated 20th July 2001 Exhibit G to the petition identifying the conditions which had not been fulfilled. The Garodianagar Welfare Society – respondent No. 7,hereinafter called “the welfare society”, thereupon addressed a letter to the Municipal Commissioner, Mumbai Municipal Corporation pointing out that the Garodianagar Residents colony was one of the largest in Mumbai and that the residents had formed an association in 1999 and this association welcomed the decision of the Government of Maharashtra to insist on better civic amenities in the colony. The welfare society also filed a writ petition being OOCJ Writ Petition No.2238 of 2001 highlighting several problems and grievances which called for redressal but in its order dated 17th October, 2001 the Bench observed that it was not possible for it to go into each of the grievances made by the welfare society, and that the matter should be referred to the Municipal Commissioner or the Authorised Deputy Municipal Commissioner of the area to entertain the complaints, make the necessary enquiry and to pass appropriate directions in accordance with law. Shri G.R. More Patil, the Dy Municipal

Commissioner then examined the various issues raised by the welfare society and observed that some of the undertakings/ assurances given by the promoter / builder under the agreement had not been implemented and as such issued certain directions to ensure their compliance vide order dated 24th January, 2002 Exhibit F. Exhibit F has been impugned in this petition by the petitioner herein with the Garodianagar Welfare Federation of Housing Societies and the welfare society being arrayed as party respondent nos 6 and 7 respectively. The primary challenge is to the direction to hand over the management of the RG's to respondent No.7.

4. The plea raised by the petitioner herein is that the contract did not envisage the handing over of the R.G. to the respondent- societies and that the petitioner alone was entitled to oversee and maintain the RGs for the benefit of the residents which included the members of the welfare society. It has further been pleaded that the R.Gs. had been handed over for the purpose of development to various public trusts and NGOs i.e. Respondent Nos. 8 to 17 to the petition and in this view of the matter there was little that the petitioner could do in the

circumstances. Respondent No. 7 in its reply has controverted the pleas raised by the petitioner and highlighted that there was no proper sewerage net work in the layout for Garodianagar and that the R Gs have been handed over for a consideration to private parties closely associated or related to the builder- writ petitioner and large structures had been constructed on the plots in breach of the obligation to keep the same open and unbuilt. It has also been prayed that as the petitioner had not acted in terms of the sanction granted and the lay out plan, the petition ought to be dismissed with costs.

5 It would be seen from the facts narrated above that the main issue that arises would be as to the authority which was to manage and maintain the R.Gs. The learned counsel for the petitioner has at the very out set argued that there was no commitment whatsoever on the part of the petitioner to hand over the R.Gs to respondent Nos 6 & 7 and that in any case they were already being maintained by well known NGOs and others represented by respondent Nos 8 to 17, who had developed the plots for the benefit of the residents of the area. Some, amongst respondent Nos 8 to 17, have also supported the stand of the

petitioner.

6. Mr. Shiraz Rustomji, the learned counsel appearing for respondent Nos. 6 and 7 has, however, strongly supported the impugned order and drawn our attention to the various documents and orders on record. Mr. Rustomji has first referred us to Exhibit B dated 20th May, 2005 to the petition, an agreement between Shri Gordhandas Shivchandrai, the predecessor in interest of the petitioner and others and the Municipal Commissioner, Bombay Municipal Corporation, Bombay accepting the terms and conditions for sanction of the lay out plan and to clause 8 in particular which reads as under:

> "That the plots A,B,C,D,E,F and G together admeasuring 32,414 sq yds, and shown in green colour in the plan shall kept open and unbuilt upon and shall be developed as recreation ground/ amenity open space".

He has also drawn our attention to Exhibit 1, letter dated 29th April 1986 by the Executive Engineer Building Proposal

addressed to the petitioner pointing out that 4-5 RG plots had not been developed as required although many years had passed since the approval of the layout and building plans and as the owner he was required to hand over these plots to the federation of the plot owners of Garodianagar to be used as recreation grounds. It has been pointed out that pursuant to this letter the petitioner gave a reply at Exhibit 2 to the reply dated 7th November, 1986 and in para 6 of this communication it was pointed out that as there was no federation of plot owners in existence, the balance recreation plots could not be handed over to any body in his personal capacity, and as such the question of handing over of the plots to the purported federation did not arise, but, he was nevertheless willing and ready to hand over the plots to a body or person suggested by the Corporation. Mr. Rustomji has then highlighted para E of the writ petition to argue that the stand now taken by the petitioner was clearly contrary to his undertakings and serious action was called for. We reproduce the relevant portion of the said paragraph hereinunder:

> "In the terms and conditions of the said agreement executed between the developers

> and respondent no.l, plot nos A to G in the said layout were to be kept open, unbuilt upon and were to be used as recreation grounds, open space. It did not envisage handing over of the same to the federation of the residents of the area. Similarly the said agreement permitted the developers to utilise certain plots in the said layout for specific purposes like hospital, school, community center, temple etc. Therefore the petitioner who is entitled to the said plots earmarked for use as recreational areas can utilise the plots earmarked for specific purposes and uses by exploiting the same for the said purposes and uses, and the federation of cooperative housing society or users are not entitled to claim the said plots to be developed by the residents/ or federation."

It is also clear from the reply filed by respondent No.7 that the petitioner in order to wriggle out of his commitments had resorted to various proceedings but without success. We observe that vide letter dated 5th October, 1990 Exhibit 3 the Dy Chief Engineer had called upon the petitioner to develop all the RG plots and keep them open and accessible to all occupants of the layout and

to remove restrictions on the use of the recreation space of the layout by the occupants. Vide letter dated 20th August 1992 Exhibit 4 the Dy Chief Engineer after referring to his earlier letter directed the petitioner to desist from renting out the RG plots for marriages and other such functions and to keep them open and accessible to all occupants of the colony. This communication was challenged by the petitioner in Writ Petition No.2599 of 1992 which was dismissed as withdrawn on the submission made by the learned counsel for the petitioner on 18th December 1992 giving him liberty to seek a change of user of the RG plots as contemplated under the MRTP Act. An application was thereafter made by the petitioner with respect to a change of user of the RG plots but the same was rejected by order dated 24th February 1993 Exh 6 to the reply and from the material on record we notice that several structures have nevertheless been constructed. It is also clear from the record that after the order Exh 6 had been made, the petitioner wrote yet another letter dated 6th May 1996 Exhibit 7 and in para 19 additional terms and conditions were added inter-alia that the ownership of the RG would vest in the name of a duly registered federation of plot owners of the layout. It is thus evident from the above that despite repeated

assurances that the RG plots would be used for the purpose of recreation and remain unbuilt and that their management would be left to the plot owners, the petitioner has not implemented the assurances and is seeking to opt out of his commitments. The record also reveals that respondent no. 7 is a duly registered society and as per the directions given in the impugned order that the management of the RGs has to be handed over to the said respondent.

7. From all that is stated above in our opinion the petitioner is a person who has misused the judicial process and has fearlessly and relentlessly violated the solemn undertakings given by him time and again, and as such he must be saddled with costs. Accordingly while dismissing this petition we impose cost of Rs.50,000/- to be recovered from the petitioner and paid into the funds of respondent no. 7 and further direct the respondent- Municipal Commissioner to send the matter to his legal department and to determine under which provisions of law a prosecution would fall and immediately thereafter launch criminal proceedings against the petitioner.

CHIEF JUSTICE.

V.M. KANADE, J.